

DRAFT PROPOSAL

INFORMAL DISPUTE RESOLUTION: OMBUDSMAN

The State Board should appoint one or more ombudsmen assigned to each Regional Board. The person so assigned should have no other duties. The person assigned should have at least three years experience in remediation of UST releases. The Board should appoint a sufficient number to each Regional Board so that the response time is no more than two weeks. The Board should direct the ombudsmen to decide all matters brought before them in a way that promotes swift and cost-effective cleanup and closure of tank cases, consistent with statutory and regulatory requirements.

Any responsible party who believes that any corrective action requirement imposed by a Regional Board or a local agency within the Board's geographic area is unnecessary, not cost effective, or otherwise unreasonable may request that the requirement be reviewed by the ombudsman. The request shall be made in writing, but it need only identify the case number, a brief description of the corrective action requirement in question, the agency and case manager making the request, and the name of the responsible party and its consultant. The request may, but need not, state the reasons why the responsible party thinks the request should be modified or deleted. The point is to minimize the formality, encourage discussion, and avoid the necessity for the involvement of attorneys.

Within two weeks of the request, the ombudsman shall schedule a meeting with the responsible party, its consultant and the regulator to discuss the issue. If the case is Fund reimbursable, the ombudsman shall attempt to include a representative of the Fund by phone, if possible. If a representative of the Fund is not available, the ombudsman shall consult with someone from the Fund after the meeting.

Within two weeks after the meeting, the ombudsman shall issue a written recommendation regarding the corrective action requirement at issue. If the ombudsman finds that the corrective action requirement at issue should be deleted or modified, the written decision should specify what the corrective action requirement should be. If the ombudsman's decision changes the corrective action requirement, that change shall be binding on the Regional Board or the local agency. If the ombudsman's decision upholds the regulator, that shall not preclude the responsible party from using existing appeal procedures to challenge the corrective action requirement, and the ombudsman's decision shall not be part of the administrative record on appeal.

Peter Niemiec, 07/27/09